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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
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10 CARLOS BENCOMO,

11 Petitioner,

12 v.

13 DAVID SINGER, U.S. MARSHAL,

14 Respondent.
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No. CV 12-6601 GW (FFM)

ORDER RE SUMMARY
DISMISSAL OF ACTION

16 On July 31, 2012, petitioner filed what is captioned a Petition for Writ of
17 Habeas Corpus by a Person in Federal Custody. Petitioner alleges that he is a
18 pretrial detainee currently being held at the Metropolitan Detention Center
19 (“MDC”). Petitioner claims that he has injured his shoulder but that he is being
20 denied medical treatment.

21 Petitioner’s claim is not directed to the legality or duration of petitioner’s
22 current confinement. Rather, petitioner’s claim is directed to conditions of
23 confinement allegedly experienced by petitioner at MDC.

24 The Writ of Habeas Corpus is limited to attacks upon the legality or
25 duration of confinement. *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979)
26 (citing *Preiser v. Rodriguez*, 411 U.S. 475, 484-86 (1973)). “A civil rights action,
27 in contrast, is the proper method of challenging ‘conditions of . . . confinement.’”
28 *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (quoting *Preiser v. Rodriguez*,

1 411 U.S. at 498-99); *see also Young v. Kenny*, 907 F.2d 874, 875 n.1 (1990).
2 Petitioner's claim as presently alleged does not implicate the legality or duration
3 of confinement, but rather concerns the conditions of his confinement.

4 If petitioner wishes to pursue a civil rights action, he should use the
5 appropriate form and pay the appropriate filing fee (or demonstrate that he is
6 unable to pay the fee¹). Petitioner is advised that pursuant to 42 U.S.C. § 1997e(c)
7 he must exhaust his administrative remedies before commencing his civil rights
8 action. In addition, any civil rights complaint filed by petitioner will be subject to
9 screening, for purposes of determining whether the action is
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13 ¹ Petitioner is advised that if he files a Request to Proceed in Forma Pauperis with
14 respect to a civil rights action and such request is granted, petitioner will only be
15 excused from paying the full fee *in advance*. Petitioner nonetheless would be
16 required to make monthly payments on the fee until it is paid in full. In this regard,
28 U.S.C. § 1915(b)(1) provides, in part:

17 [I]f a prisoner brings a civil action or files an appeal in forma
18 pauperis, the prisoner shall be required to pay the full amount of a
19 filing fee. The court shall assess and, when funds exist, collect, as a
20 partial payment of any court fees required by law, an initial partial
filing fee of 20 percent of the greater of -

21 (A) the average monthly deposits to the prisoner's
account; or

22 (B) the average monthly balance in the prisoner's
23 account for the 6-month period immediately
24 preceding the filing of the complaint or notice of
appeal.

25 (2) After payment of the initial partial filing fee, the prisoner shall be
26 required to make monthly payments of 20 percent of the preceding
27 month's income credited to the prisoner's account. The agency
28 having custody of the prisoner shall forward payments from the
prisoner's account to the clerk of the court each time the amount in the
account exceeds \$10 until the filing fees are paid.

1 frivolous or malicious; fails to state a claim on which relief may be granted; or
2 seeks monetary relief against a defendant who is immune from such relief. 42
3 U.S.C. § 1997e(c).

4 Pursuant to Rule 4 of the Rules Governing Section 2254 cases in the United
5 States District Court, it is therefore ordered that this action be dismissed without
6 prejudice.

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8 DATED: August 19, 2012



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10 GEORGE H. WU
United States District Judge

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12 Presented by:

13
14 /S/ FREDERICK F. MUMM
15 FREDERICK F. MUMM
United States Magistrate Judge